

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

STEVEN ROBINSON,

Plaintiff,

v.

Case No. 2:10-cv-00111

JIM RUBENSTEIN, Commissioner,
DAVID BALLARD, Warden,
JAMES MCCLOUD, Segregation Commander, and
RUSSELL MATHENY, Captain,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On February 2, 2010, Plaintiff Steven Robinson filed the instant action (Complaint, docket # 1). The Complaint alleges that defendants McCloud and Matheny beat him up for no reason other than to establish McCloud's and Matheny's authority over the Quilliams II unit at the Mount Olive Correctional Complex. Other inmates were originally listed as plaintiffs on the complaint; however, because the Complaint did not allege any facts concerning those inmates, they were dismissed as plaintiffs in this action.

Plaintiff Robinson did not sign the Complaint, and did not pay the \$350 filing fee or file an Application to Proceed Without Prepayment of Fees and Costs. Thus, by Order entered February 10, 2010, the undersigned advised Plaintiff Robinson that this case would not go forward unless he completed an Application to Proceed Without Prepayment of Fees and Costs, including having the

Certificate portion of the Application completed by the Trustee Clerk at the prison. Plaintiff was directed to file the Application or pay the \$350 filing fee within 30 days.

Since that time, Plaintiff has neither paid the \$350 filing fee, nor filed an Application to Proceed in forma pauperis. In fact, Plaintiff has taken no further action whatsoever concerning this case. Accordingly, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has wholly failed to prosecute this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(C), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff.

March 24, 2010

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge